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SUBJECT: THE RIGHT TAKES ON THE JUDICIARY OVER AMBASSADOR'S MEETING
WITH HIGH COURT PRESIDENT

REF: TEL AVIV 3111

SUMMARY

¶1. (SBU) On the eve of the Annapolis conference in November 2007, a group of right-wing Israeli parliamentarians accused the President of Israel's Supreme Court of violating professional ethics by meeting with the US Ambassador to Israel (reftel) to discuss settlement and separation fence construction issues as well as legal cases. The group of legislators urged the Ministry of Foreign Affairs to lodge a sharp protest with the State Department over what they viewed as interference in the Israeli judicial system. They were also vocal in the media in demanding that Justice Beinish either resign or recuse herself from all cases concerning settlement and barrier fence issues. The same group of right-wing legislators has now put its protest in writing. In an unprecedented letter, addressed to Supreme Court President Dorit Beinish and released in the wake of President Bush's visit to Israel, the group of twenty MKs once again demands that she recuse herself from presiding over all cases pertaining to settlement and barrier fence issues. Beinish, who is not likely to bow to dictates from the legislature, is not expected, even by her toughest adversaries, to capitulate. However, her opponents may have other strategic objectives in mind, such as discrediting her rulings to the point where the settler community en masse is emboldened to flout them.

THE PRESIDENT CREATES A PRECEDENT

¶2. (SBU) Precedent is a key argument in all legal discourse and those who wish to see Justice Beinish divested of the power to rule on settlement and separation fence issues argue that her discussion of such issues with the US Ambassador was "unprecedented." (Note: This is of course not the case. The Ambassador held several meetings with Beinish's predecessor, continuing a tradition of such meetings with the court. End Note.) In the initial wave of protest in November, National Union-National Religious Party (NU-NRP) MK Uri Ariel wrote to Justice Beinish that "By the very essence of agreeing to meet and discuss this subject with the Ambassador you have damaged the standing of the Supreme Court... and turned it into a political organization." While MK Ariel focused his ire principally on Justice Beinish, his faction colleague MK Ariele Eldad accused the United States of "crude intervention in the Israeli legal system and an attempt to pressure the Supreme Court." (Note: Again, this is not the case. The office call was a normal diplomatic contact intended to improve our understanding of past rulings. There was no attempt to influence pending cases. Indeed, this would be almost impossible to do; in the Israeli system rulings are issued by multi-judge panels which often do not even include the president of the court. End Note.) MK Zevulun Orlev [NU-NRP], who chairs the Knesset's State Audit Committee, pulled the rhetoric and the campaign away from a pre-Annapolis assault on the United States and

its officials and redirected it at Israel's highest legal court and its president.

TARGETING THE PRESIDENT...AND THE COURT

13. (SBU) While Orlev's leadership of the campaign has so far prevented the rhetoric from spinning out of control, he initially went as far as to demand the resignation of the Supreme Court President: "This is a serious action and absolute tampering with the judicial establishment," he said. "This is more than an appearance of American influence on the rulings of the Supreme Court and abrogation of its considerations against political interests." At present, however, Orlev's campaign has dropped the demand that Beinisch resign altogether and is instead seeking to limit her ability to rule on West Bank issues. The open letter to Beinisch, signed by twenty members of right-wing and ultra-orthodox factions in the Knesset, claims that the court president's meeting with the Ambassador jeopardized Israel's sovereignty and the independence of the judiciary and that it is therefore incumbent upon Beinisch to cease such discussions. The letter also calls for Beinisch to recuse herself from future rulings on issues related to settlements and the separation barrier. However they stop short of calling for her resignation.

PRECEDENT BUT NO PROTOCOL

14. (SBU) The members of Knesset, whose letter to the President of the Supreme Court is itself a break with precedent, admit that they have not had access to any report on the meeting, nor do they know for a fact that political issues were discussed. This salient point

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emerged when Knesset Member Orlev was interviewed by Israel Radio on January 14 and admitted that he had asked the MFA whether such a report existed and if he could review it. Orlev said that to date he had not received an answer and he did not plan to wait very long for one. What was clear, he asserted, based on his own experience of meetings with ambassadors, was that they did not hold such meetings merely to hear others' ideas but to pass on a message and to exert influence. (Note: Orlev has never met with the Ambassador.) Pressed by the radio interviewer as to whether this could be said even of a supremely democratic country such as the United States, Orlev said it had been reported, only days ago, that over dinner at the Prime Minister's residence, visiting President Bush had asked the Israeli cabinet to "look after" PM Olmert "and let him work," so "who knows what the Ambassador asked of the President of the Supreme Court..." The end result, Orlev insisted, was a loss of public confidence in the credibility of court and what was required in this case was that at the very least, and if only for the sake of appearances, Justice Beinisch needed to recuse herself from presiding over settlement and separation barrier cases, at least in the foreseeable future.

A BARRAGE FROM THE BENCH

15. (SBU) Acknowledging receipt of the parliamentarians' letter, Supreme Court President Dorit Beinisch responded: "Your claims that the court is conducting political discussion or accepting dictates from anyone, Israeli or foreign, are delusional, false and baseless" she declared in a press statement, adding that her predecessors had routinely met with foreign diplomats, both at the request of the latter and at the request of Israel's Ministry of Foreign Affairs, but that such meetings had refrained from addressing politics or issues pending before the court.

COMMENT

16. (SBU) Almost three decades have passed since then Prime Minister Menachem Begin made access to the Supreme Court a rightful resort

for Palestinian plaintiffs in appeal hearings against the occupying authority. Since then, the court has been mired in controversy and dispute over land and settler issues in the occupied territories. The attack on Justice Beinisch, however, marks a low benchmark in relations between the right-wing and the judiciary in which insult and disrespect may prove to be more than merely personal. The parliamentary group headed by MK Orlev may only represent one sixth of the plenary but comprises members from six factions, including one Kadima MK. Such a challenge to the authority of Israel's highest legal instance by the right wing over settlement issues may be designed to provide a pretext for settler activists to deny the legitimacy of any future high court rulings on settlement evacuations, which could complicate efforts to implement Israel's Roadmap commitments.

JONES